

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
FEBRUARY 7, 2003**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on February 7, 2003. The meeting was tape recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commission Member Ricky Wright. Commission Member Mike Joyner was not present.

MINUTES OF JANUARY 10, 2003 MEETING

The Chairman asked Commission Member Ricky Wright if he had any corrections or additions regarding the Commission minutes from the January 10, 2003, meeting. Commissioner Wright had no corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioner Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright stated that he found no conflict. The Chairman stated she found no conflicts of interest with regard to herself.

I. HEARING CASES – 115 listed.

Chief Deputy Counsel Fred A. Gregory stated that Gregory Dent, manager of contested case #1, Raleigh Live, was present, but left. He asked that the case be carried over to the March 14, 2003 Commission Meeting. Mr. Gregory stated that we did have a signed offer. Assistant Administrator Doyle Alley stated that he had talked with Mr. Dent and he felt that Mr. Dent wasn't in a position to pay the fine at this time and that was the reason why he was asking for the case to be carried over to next month. Commissioner Wright made a motion to have the case carried over until next month. So Ordered.

Assistant Counsel LoRita K. Pinnix spoke in regard to contested case #2, Jrs Night Hawk. Ms. Pinnix stated that Judge Sammie Chess, Jr., felt that the fight was not the respondent's fault and that he responded in the best way he could. The Chairman moved to adopt the Judges Findings of Fact and Conclusions of Law and to re-issue an on-premise malt beverage permit to the petitioner. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Larry Black, manager of case #18, Pinewood Country Club, was present to speak on behalf of the establishment. Assistant Counsel Tim Morse stated that during High Point furniture week, Pinewood Country Club closes the private club and Klaussner throws a reception under their special occasion permit. Mr. Morse further stated that it is technically improper that they being the permittee can host an event simultaneously. The Chairman asked Mr. Black who brought in the liquor. Mr. Black stated that Klaussner Furniture brought the liquor in. He further stated that they serve their customers breakfast, lunch and dinner. He said that Klaussner Furniture Corporation is a parent company, Klaussner Investment owns Pinewood Country Club, which is owned by Hauns Klaussner who resides in Germany. Mr. Black stated that he thought that if he kept his special occasion and brown bagging permits effective, it would be permissible to have brown bagging at the club. And that the liquor being provided for by the customer, being Klaussner Furniture would be permissible. Mr. Black said that about 10 years ago he met with the ABC Board and ALE to discuss this and was told that it was ok. He further stated that he wasn't aware that he was committing any violations. The Chairman stated that the special occasion permit was not designed for the permittee themselves to buy liquor under the mixed beverage law and that technically Mr. Morse was correct in stating that Klaussner committed a violation of the ABC Laws by bringing in non mix beverage tax liquor to the country club. She further stated that if any member, who was not an owner of the country club, had hosted an event or reception, it would have been ok for them to bring in liquor. The Chairman made a motion to modify the penalty to read...Permittee's ABC permits shall be suspended for 30 days beginning March 7, 2003. Such suspension may be avoided upon the permittee's payment of a penalty of \$3,750.00 on or before February 28, 2003. So Ordered.

Assistant Counsel LoRita Pinnix stated that she wanted to bring case #68, Silver Express, to the Commission's attention. Ms. Pinnix stated she noticed when going over the violation, that it was a first time offence case. She further stated that they have held their permits for five years and that she felt that the penalty could be lowered. Commissioner Wright made a motion to lower the penalty to seven days or \$750.00. So Ordered.

There were two carry over cases to the March Commission meeting:

#1 – Raleigh Live

#109 – Red Apple Market 11

REMAINING OFFERS IN COMPROMISE

The Chairman made a motion to accept all other offers in compromise with the exception of #1, #2, #68 and #109, which had either been ratified earlier or continued. Seconded by Commissioner Wright. So Ordered.

- II. ABC Store Sign – Sanford ABC Board - ABC Administrator Michael Herring presented information regarding Sanford ABC Board requesting approval to have an ABC sign placed on the front roof of the store. The ABC store is located in the Tramway Crossing Shopping Center and has been open for two and one half years. Presently they only have vinyl 10" ABC lettering in the window. The Sanford ABC Board would prefer a roof sign because the location of the store is below normal level and is hard to see from the highway. They are requesting that the sign be 3 foot by 6 foot. Mr. Herring made a recommendation to approve the store sign. The Chairman made a motion to approve the store sign. So Ordered.

Administrator Michael Herring spoke regarding Forsyth ABC Board requesting to have a joint bar expose. The purpose of the expose is to give the mixed beverage permittee's in the Triad an opportunity to meet with the broker and distiller representatives to discuss and taste their products, with the possibility of ordering their products. There were three exceptions that they would like the Commission to approve.

1. Want to allow the distiller representatives to display all their products.
2. Each business that is invited, designate a driver for the group because there will be sampling at this expose.
3. Allow specialty items bearing spirituous advertising to be given out, but not to exceed \$5.00 in wholesale value.

Mr. Herring recommended that the Commission approve the exceptions that had been submitted and allow them to sponsor this Triad expose. The Chairman made a motion that the memo date June 13, 1997, by former Chairman Judge Bason, be updated and amended to permit the companies to show all products, each business be required to have a designated driver and to get with local boards that are putting the event together to prepare some type of identification that would distinguish them as a designated driver and that they would not be sampling and specialty items be given away up to \$5.00. Seconded by Commissioner Wright. So Ordered.

Mr. Herring had another request regarding DISCUS and Sparrow and Associates, one our brokers. They requested that the Commission modify the guidelines that were approved regarding on-premise solicitation by spirituous distiller representatives that went into effect on September 1, 2002. To modify to allow distiller representatives to provide to mixed beverage permittee's, POS materials of various kinds, table tents and clip-ons, back bar pedestals and place mats, coasters, napkins with company logos on them. Mr. Herring stated that both requests were very similar. Mr. Herring had a suggestion with regard to the language that could be used. He stated that we could add a new C (4) to provide POS materials of various kinds on paper, cardboard or canvas to include table tents, clip-ons and back bar pedestals and to provide place mats, coasters and

napkins with company logos that carry a moderation message. Mr. Herring recommended that the Commission approve the material first to make sure that the Commission could keep a handle on it, since this policy is pretty new to the state and only just becoming effective September 2002. The Chairman stated that she felt that something needed to be included regarding the dollar limitation that had been established by BATF. Mr. Herring stated that he could research that and find out what that was. He further stated that he would work up some language and have it ready for the next meeting.

Assistant Administrator Doyle Alley had a request from an attorney, Anderson Hodston, who is representing Fertelly Importer. Mr. Hodston asked for an exemption 18B-1116(a)(2), the restriction of an industry member as a wine importer to have any direct or indirect financial interest in the business of any alcohol beverage retailer in this state. Fertelly Importer wanted a retail permit to operate a bar in downtown Wilmington, serving only beer and liquor. Mr. Alley stated that it was his recommendation that the Commission deny this request for exemption. The Chairman made a motion to deny the request. Seconded by Commissioner Wright. So Ordered.

CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEYS AND LEGAL STAFF

The Chairman made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of consulting with staff attorneys and for the purpose of reviewing confidential memoranda from the Attorney General's Office with regard to actions involving Beskind vs. Easley - Direct Shipping Case and Carandola - Adult Entertainment Activity case.

No other business, new or old, was heard. The Chairman made a motion to adjourn the meeting. Seconded by Commissioner Wright. So ordered.

With no further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division